

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

WPS-ESI GAS Storage, LLC

Docket No. CP04-80-000

ORDER ISSUING CERTIFICATE
AND APPROVING MARKET-BASED RATES

(Issued July 13, 2004)

1. On March 11, 2004, WPS-ESI Gas Storage, LLC (WPS-ESI) filed an application for a blanket certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act (NGA) and section 284.224 of the Commission's regulations authorizing certain interstate services.¹ WPS-ESI also seeks approval to charge market-based rates for its storage services under the section 284.224 blanket certificate. The Commission finds that granting WPS-ESI's proposal in is in the public interest to increase the availability of natural gas storage service in the upper Midwest region of the United States.

Background

2. WPS-ESI is a limited liability company organized and existing under the laws of the State of Wisconsin. It owns and operates the Kimball 27 Gas Storage Field, an underground Niagaran gas reservoir storage facility located in Kimball Township, St. Clair County, Michigan. The storage field functions as a peaking gas storage field, providing 30-day service and some base load service. WPS-ESI states all of its gas supplies are received and ultimately consumed in Michigan, and its rates and services are regulated by the Michigan Public Service Commission (Michigan PSC).² Therefore,

¹18 C.F.R. 284.224 (2003).

²On February 22, 2000, the Michigan PSC granted WPS-ESI a certificate of public convenience and necessity to acquire, construct, own and operate the Kimball 27 Gas Storage Field. *See* Exhibit Z-1 to WPS-ESI's application.

WPS-ESI states that it qualifies under section 1(c) of the NGA for the Hinshaw exemption from the Commission's NGA jurisdiction.

3. WPS-ESI began its storage operations in October 2001. It has only one customer, WPS Energy Services, an affiliated, non-jurisdictional marketing company serving customers in Michigan, other northern states and Canadian Provinces. Both WPS-ESI and WPS-ESI Energy Services are subsidiaries of WPS Resources Corporation, headquartered in Green Bay, Wisconsin.

4. WPS-ESI's storage facilities have working gas capacity of approximately 3.049 Bcf, with maximum storage deliverability of 100,000 Mcf/d and a maximum injection capacity of 45,000 Mcf/d. WPS-ESI's storage facilities include an eight-inch diameter, 3-mile long pipeline that delivers gas into storage and redelivers gas from storage. WPS-ESI does not provide stand-alone transportation service. WPS-ESI states that about one-half of its capacity, including associated withdrawal and injection capabilities, is not subscribed. Further, WPS-ESI is located in close proximity to several interstate pipelines.³ WPS-ESI desires to provide jurisdictional storage service for gas supplies that will be transported out of Michigan and therefore are not covered by the Hinshaw exemption in section 1(c) of the NGA.

5. Accordingly, WPS-ESI seeks a blanket certificate pursuant to section 284.224 of the NGA which will permit it to provide interstate services subject to the Commission's NGA jurisdiction. WPS-ESI states that it will provide its interstate services on a non-discriminatory basis.

6. WPS-ESI seeks authority to charge market-based rates for the firm and interruptible storage activities it will provide under the section 284.224 blanket certificate. In support of its request for market-based rates authority, WPS-ESI has filed, as Exhibit Z-5 to its application, a market power analysis prepared by International Gas Consulting, Inc. (IGC), as discussed below.

³These interstate pipelines include ANR Pipeline Company, Great Lakes Gas Transmission Company LP, and Vector Pipeline LP. WPS-ESI also is in proximity to several distribution companies, including Michigan Consolidated Gas Company, Southeastern Michigan Corporation, and Consumers Energy Company.

Notice

7. Notice of WPS-ESI's application was published in the *Federal Register* on March 23, 2004 (69 Fed. Reg. 13515). No comments or interventions were filed.

Discussion

8. WPS-ESI states that it qualifies for the Hinshaw exemption in section 1(c) of the NGA, which applies to a pipeline when all of its gas supplies are received from another person within or at the boundary of its state, all the gas is consumed within its state, and its rates, facilities, and services are subject to regulation by a state commission.⁴ Section 284.224 of the Commission's regulations provides that any pipeline company exempt from the Commission's jurisdiction pursuant to section 1(c) of the NGA may file an application pursuant to section 7(c) for a limited jurisdiction certificate of public convenience and necessity to provide jurisdictional interstate services.⁵

9. A certificate issued pursuant to section 284.224 of the regulations grants blanket authorization for a Hinshaw pipeline to provide natural gas service in interstate commerce to the same extent as intrastate pipelines under sections 311 and 312 of the Natural Gas Policy Act of 1978 and the Commission's implementing regulations in subparts C and D of Part 284 of its regulations. WPS-ESI's application states that the applicant will comply with all the conditions applicable to the section 284.224 blanket certificate. Further, WPS-ESI states that it will use the certificate to provide jurisdictional services on a non-discriminatory basis to meet the growing demand for gas storage service in the upper Midwest region of the United States.

10. WPS-ESI anticipates additional demand will be due to the growth of the gas-fired electric generation market, in which demand for gas service can change hour by hour throughout the day based on variance in regional electricity demand. It states that the strategic placement of high deliverability, multi-cycle natural gas storage projects like the applicant's Kimball 27 Gas Storage Field, with multiple interstate pipeline connections, will add needed flexibility to the existing gas infrastructure in meeting both seasonal and intra-day peaking and balancing needs. In view of these considerations, the Commission finds that issuance of the requested certificate to WPS-ESI is in the public interest.

⁴ U.S.C. § 717(c).

⁵ As defined in section 284.1 of the Commission's regulations, jurisdictional transportation of natural gas includes storage, exchanges, backhauls, and other methods of transporting gas in interstate commerce.

11. The Commission also finds that it is appropriate to grant WPS-ESI's request for market-based rate authority for its jurisdictional services under the section 284.224 blanket certificate. The analytical framework for the Commission's evaluation of market-based rate proposals is set forth in its 1996 Alternative Rate Policy Statement,⁶ which provides guidelines for the identification and analysis of the issues presented here.⁷

12. The basic inquiry established by our Alternative Rate Policy Statement is whether WPS-ESI will have market power. The Commission requires every applicant seeking the right to charge market-based rates to demonstrate that it lacks significant market power in the relevant markets. The analysis of whether the applicant has the ability to exercise market power includes three major steps: define the relevant markets; measure the market share and market concentration; and evaluate other relevant factors.⁸

13. The first step in the analysis is to define the relevant market. This step begins by identifying "the specific products or services and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power."⁹ A good alternative is one that is "available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative" for the applicant's service.¹⁰ After identifying available alternative products or services, the Commission will identify all the sellers of such products or services. "The collection of alternative sellers and the applicant constitutes the geographic market."¹¹ The product

⁶Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶61,076, *reh'g denied*, 75 FERC ¶61,024 (1996).

⁷As applied here, the Alternative Rate Policy Statement's principal purposes are to determine: (1) whether WPS-ESI can "withhold or restrict services" and thereafter increase price by a significant amount for a significant period of time; and (2) whether WPS-ESI can "discriminate unduly in price or terms and conditions." Alternative Rate Policy Statement 74 FERC at 61,230 (1996).

⁸*Id.*

⁹*Id.*

¹⁰*See* Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 at 62,299 (1994) (interstate pipeline permitted to charge market-based storage rates for production area storage facility). In addition, to constrain the exercise of market power, the alternative must be available in sufficient quantity to make a price increase unprofitable. *Id.* at 62,299.

¹¹Alternative Rate Policy Statement, 74 FERC at 61,232 – 33.

market includes "the applicant's service together with other services that are good alternatives."¹²

14. The Alternative Rate Policy Statement requires that applicants aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller; *i.e.*, "the capacity of an applicant's affiliates offering the same product are to be included in the market share calculated for the applicant."¹³ Under the Commission's regulations, an "affiliate" means another person which controls, is controlled by, or is under common control with, such person.¹⁴ Control "includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control."¹⁵

15. WPS-ESI's consultant, IGC, performed a market power analysis for natural gas storage designed upon what it considered to be the relevant geographic market. Based on the Commission staff's review and recommendations, the Commission finds that IGC's findings are reasonable and appropriate. IGC determined the relevant geographic market includes the geographic area traversed by the northern zone pipeline operated by ANR Pipeline Company (ANR) in Michigan, northern Indiana, northern Illinois, and eastern Iowa. IGC's study concludes that the relevant geographic market also includes western Ontario, Canada, a region adjacent to ANR's interstate system, because the Canada/United States gas market is now highly integrated, such that analysis can properly incorporate Canadian storage fields. IGC's analysis contained over 100 storage fields located in the five state/province area in the defined geographic market.

16. WPS-ESI, its parent WPS Resources Corporation, and other affiliates do not currently own or operate any natural gas facilities other than the Kimball 27 Gas Storage Field. Therefore, the analysis did not need to take into consideration other storage facilities under the control of affiliated companies. IGC's study determined that the Kimball 27 Gas Storage Field's market share is less than one percent and that the working gas and deliverability Herfindahl-Hirschman Index (HHI) calculations are 1,379

¹²*Id.* at 61,231.

¹³*Id.* at 61,234, n.59.

¹⁴18 C.F.R. Section 161.2 (2003).

¹⁵*Id.*

and 1,393, respectively.¹⁶ These results are well below the Commission's market concentration benchmark of 1,800 for the HHI calculation.¹⁷

17. The Commission finds that WPS-ESI is a small player in its market with a comparatively small market share of working gas and deliverability capacity. Its market share is too small to attract or keep customers at prices above regulated rates. Further, the calculated HHIs are within the range accepted for other pipelines seeking market-based rates for similar services. The HHI indices in this case of 1,379 for working gas and 1,393 for peak day deliverability are significantly lower than the market concentration for other market-based rate projects approved in the Pennsylvania and New York region, where several storage projects have received Commission approval to charge market-based rates.¹⁸ Even if the Commission were to disregard the storage facilities in Ontario, Canada, that were included in IGC's study¹⁹ the market power analysis would meet the HHI threshold level test, as the Commission's staff calculates the

¹⁶The analysis looked at the applicant's Kimball 27 Gas Storage Field as a whole, including that portion of the facility's capacity currently under contract to its affiliated marketer WPS-ESI Energy Services.

¹⁷An HHI is calculated by summing the squares of the market shares of the sellers of the relevant service in the relevant geographic market. Thus, if there are only two sellers of storage service in the relevant market area, one with a market share of 75 percent and the other with a 25 percent share, the HHI equals $(75)^2 + (25)^2 = 5,625 + 625 = 6,250$. The Commission uses the HHI to determine market concentration. A low HHI of below 1,800 indicates that the market is less concentrated and, therefore, that the Commission can give less scrutiny to the applicant's potential to exercise market power. An HHI over 1,800 indicates the market is sufficiently concentrated that the Commission needs to perform a more thorough examination of competitive conditions. *See, e.g.*, Wychoff Gas Storage, L.L.C., 105 FERC ¶ 61,027 at n. 20 (2003).

¹⁸Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Steuben Gas Storage Company, 72 FERC ¶ 61,102 (1995); New York State Electric and Gas Corporation, 81 FERC ¶ 61,020 (1997); Market Hub Partners, 83 FERC ¶ 61,403 (1998); Central New York Oil & Gas (Stagecoach), 94 FERC ¶ 61,194 (2001); and Honeoye Storage Corp., 91 FERC ¶ 62,165 (2000).

¹⁹The Ontario storage facilities make-up about ten percent of the working capacity and about twelve percent of the deliverability capability of the storage fields which are located in the geographic area included in the study.

exclusion of the Canadian storage facilities would result in an HHI value of 1,547 for working gas and 1,597 for peak day deliverability for the region.

18. IGC's study emphasizes that the Commission has recognized that markets that are open to new entrants remain competitive. IGC's study indicates that the market is open to new entrants, as various storage projects have been approved in the last few years and other projects have been announced.²⁰ The study indicates that much gas production occurs in the area where the applicant's Kimball 27 Gas Storage Field is located. Consequently, many storage fields are depleted gas reservoirs.

19. The Commission also agrees with the IGC study's finding that the potential market power of the applicant's Kimball 27 Gas Storage Field is further reduced by the capacity release market. IGC also claims that alternatives to conventional underground storage in the area also reduce the ability of the Kimball 27 Gas Storage Field to exert market power. Specifically, IGC's study identifies nine liquefied natural gas peaking facilities located in the subject geographic area. These facilities add 9,201 MMcf of storage capacity and 46,759 MMcf/d of withdrawal capability in the study area. The study concludes that these facilities can compete directly with the highest cost portion of a weather sensitive gas supply portfolio.

20. Based on the above considerations, the Commission finds that WPS-ESI lacks market power in the relevant market and that its proposal to charge market-based rates, as conditioned below, is fair and equitable. To allow WPS-ESI to charge market-based rates for firm and interruptible storage services, the Commission will waive compliance with the following sections of its regulations: (1) section 157.14, which requires pipelines to submit Exhibits K (Cost of Facilities), L (Financing), N (Revenue-Expenses-Income), and O (Depreciation and Depletion); (2) the accounting and reporting requirements of Part 201 and section 260.2 (Form No. 2A), which presume cost based rates are being charged and collected; (3) section 284.7(e), which requires pipelines providing storage services under Part 284 to charge reservation fees that recover all fixed costs based on SFV rate design methodology; and (4) section 157.14(a)(10), which requires pipelines to provide total gas supply information with its application.

21. The Commission will grant WPS-ESI's request for authorization to charge market-based storage rates subject to the condition that it notify the Commission if future circumstances significantly affect its present market power status. Examples of such a change include affiliation with an interstate pipeline or local distribution company or

²⁰IGC's data indicates that eleven storage fields (including the Kimball 27 Gas Storage Field) have become operational since 1995 and one additional storage field is near beginning operations.

more concentration of the geographic markets. The Commission's acceptance of WPS-ESI's proposed market-based storage rates is subject to a condition requiring a reexamination of its market power, and its market-based rate authority, in the event: (1) WPS-ESI increases its storage capacity; (2) WPS-ESI acquires transportation facilities or additional storage capacity; (3) an affiliate provides storage or transportation services in the same market area or acquires an interest in another storage facility that can link facilities to the market area; or (4) WPS-ESI or an affiliate acquires an interest in or is acquired by an interstate pipeline.

22. The Commission's approval of market-based rates for WPS-ESI's services reflects the determination that there is no ongoing regulatory need to have cost based financial statements prepared by WPS-ESI in accordance with the Commission's Uniform System of Accounts. However, these waivers are subject to reexamination in the event that WPS-ESI's market power or market-based rates need to be reexamined as discussed above. Accordingly, WPS-ESI must keep sufficient records to produce reports consistent with the Commission's Uniform System of Accounts if it becomes necessary.²¹

The Commission orders:

(A) WPS-ESI is granted a blanket certificate of limited jurisdiction under section 284.224 of the Commission's regulations to provide jurisdictional interstate services on an open-access and non-discriminatory basis, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C and D of Part 284 of the Commission's regulations.

(B) WPS-ESI is granted authorization to charge market-based storage rates for interstate services under the section 284.224 blanket certificate granted herein.

(C) The section 284.224 blanket certificate granted herein is subject to WPS-ESI's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284 of the regulations, paragraphs (a), (c) 1 and 2, (e), and (f) of section 157.20 of such regulations, and the Commission's regulations governing affiliate transactions.

²¹Unocal Keystone Storage, 100 FERC ¶ 61,310 at P 21 (2002).

(D) WPS-ESI shall notify the Commission within 10 days if (1) WPS-ESI expands its storage capacity beyond the amount stated in this proceeding; (2) WPS-ESI acquires transportation facilities or additional storage capacity; (3) an affiliate provides storage or transportation services in the same market area or acquires an interest in another storage facility that can link facilities to the market area; or (4) an affiliate acquires an interest in or is acquired by an interstate pipeline.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.